

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MARK ANTHONY VELA,  
*Petitioner.*

No. 2 CA-CR 2015-0267-PR  
Filed September 15, 2015

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

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Petition for Review from the Superior Court in Yavapai County

No. V1300CR201080543

The Honorable Michael R. Bluff, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Sheila Sullivan Polk, Yavapai County Attorney  
By Robert J. Johnson, Deputy County Attorney, Prescott  
*Counsel for Respondent*

Craig Williams, Attorney at Law, PLLC  
By Craig Williams, Prescott Valley  
*Counsel for Petitioner*

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Miller concurred.

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ESPINOSA, Judge:

¶1 Petitioner Mark Vela seeks review of the trial court's order partially denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Vela has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Vela was convicted of four counts of aggravated assault with a dangerous instrument, aggravated assault on a peace officer, aggravated assault on an emergency medical technician, and aggravated driving under the influence of an intoxicant. The trial court sentenced Vela to four concurrent, aggravated, fifteen-year prison terms with 391 days of presentence incarceration credit, to be followed by three concurrent terms of intensive probation, the longest of which was ten years. Vela then filed a petition for post-conviction relief, which the court denied in part without conducting an evidentiary hearing. This petition for review followed.

¶3 On review, Vela maintains trial counsel failed to pursue mitigating evidence regarding his mental condition, arguing counsel should have urged the trial court to consider such evidence

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<sup>1</sup> Pursuant to Vela's request, the trial court amended the sentencing minute entry to correct and clarify the terms of probation. Vela does not challenge that portion of the court's ruling on review.

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pursuant to A.R.S. § 13-701(E)(2) and (6). He also asserts the court failed to “further investigate the extent of his [childhood] brain injury and its impact on the commission of the crimes” and to “properly assess” that injury as a mitigating factor at sentencing, and challenges the court’s conclusion that he was a malingerer. The same trial judge that had presided over portions of the competency proceedings earlier in the case, including the competency hearings, ruled in the Rule 32 proceeding.

¶4 The trial court clearly identified Vela’s claims and resolved them correctly based on a thorough, well-reasoned analysis, which we need not repeat. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). We consequently adopt the court’s ruling. *See id.* Finally, to the extent Vela asserts the record did not support the court’s finding that he was a malingerer, we conclude, based on this record, it was within the court’s discretion to make such a finding. *Cf. State v. McCall*, 160 Ariz. 119, 124, 770 P.2d 1165, 1170 (1989) (trial court required to assess defendant’s credibility based on allocution statement made prior to sentencing).

¶5 Therefore, although we grant review, relief is denied.